



**A BRIEF GUIDE ON
COLLATERAL
DAMAGES
OF ANTI-TRAFFICKING
LAWS AND MEASURES
ON SEX WORKERS**



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Introduction

Sex workers' human rights, migrants' rights and anti-trafficking organisations have for many years called for attention to be paid to some of the negative impacts of anti-trafficking discourses, policies, laws and practices on the human and labour rights of sex workers. Raids, detention, forced rehabilitation, diversion of funding and denial of sex workers' agency are all – to some extent – consequences of the current anti-trafficking framework. Major anti-trafficking (umbrella) organisations such as the Global Alliance Against Trafficking in Women (GAATW) and La Strada International (LSI) both joined the sex workers' rights movement in calling for a labour-rights and victim-centred approach to anti-trafficking.

This resource aims to collect examples of negative effects of anti-trafficking policies and measures on sex workers and other vulnerable populations. The document will be organized using the '4Ps paradigm' which often structures anti-trafficking policies and measures: Prevention, Protection, Prosecution and Partnerships. The '4Ps paradigm', originally called the '3Ps paradigm' before 'Partnership' was added, is referenced in many national anti-trafficking strategies and can also be found in the last 'EU Strategy towards the Eradication of Trafficking in Human beings 2012-2016'.¹ This strategy² identifies five priorities the EU and EU member states should focus on in order to address trafficking in human beings. Those priorities are as follows:

- Identifying, protecting and assisting victims of trafficking
- Stepping up the prevention of trafficking in human beings
- Increased prosecution of traffickers
- Enhanced coordination and cooperation among key actors and policy coherence (partnership)
- Increased knowledge of and effective responses to emerging concerns related to all forms of trafficking in human beings (that include specific issues of concern in line with the current trends and patterns).

1. European Commission. "The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016." 2012. URL: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_strategy_towards_the_eradication_of_trafficking_in_human_beings_2012-2016_1.pdf

2. The 2017 Communication from the Commission to the European Parliament and the Council prolonged the strategy beyond 2016. See: European Commission. "Communication from the Commission to the European Parliament and the Council - Reporting on the follow-up to the EU Strategy towards the Eradication of trafficking in human beings and identifying further concrete actions." December 4, 2017. URL: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/20171204_communication_reporting_on_follow-up_to_the_eu_strategy_towards_the_eradication_of_trafficking_in_human_beings.pdf.

Similarly, the US State Department uses the first three Ps (prevention, protection and prosecution) as a framework to evaluate and monitor compliance of countries with the US Trafficking Victims Protection Act of 2000 (TVPA), and the fourth P as complementary means to achieve progress across the 3Ps.³

Trafficking in human beings receives significant attention from international organizations, states, businesses, philanthropists and donors, human rights defenders and civil society organizations and others. While the fight against trafficking in human beings appears to be an issue that unites the entire international community, it intersects with issues that are not as neutral or apolitical as the overall fight against trafficking, namely migration policies, no-liberal economic policies and corporate power, security policies, and last but not least prostitution policies. Where these issues intersect with the anti-trafficking policy framework, they often result in collateral damages and unintended negative side effects, as this paper will demonstrate. Restrictive migration policies and the fight against irregular migration often push migrants into the hands of traffickers and prevent (undocumented) migrants from reporting exploitation and abuses they experienced. While on the one hand, business communities have become more concerned about and engage against ‘modern slavery’, on the other hand, they take advantage of tax havens, weak labour laws and workers’ protection laws, and undermine the roles of trade unions. Trafficking in human beings has been associated with security threats of organized crime, and such policies often compromise individual human rights in the name of collective safety. Anti-prostitution policies have also been associated with the fight against trafficking, arguing that the abolition of prostitution will reduce or even eliminate ‘sex trafficking’.⁴ However, such policies compromise sex workers’ basic human right to safety and expose the most marginalised sex workers to even more severe vulnerability.

Since the adoption of the 2000 UN Protocol to Prevent and Suppress Trafficking in Human Beings (hereinafter Palermo Protocol), millions of dollars are spent annually in order to combat human trafficking; it has been proven, however, that some of the policies, measures and interventions have negatively affected victims of human trafficking and other marginalized and vulnerable populations.

The ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’ by the UN Office of the High Commissioner for Human Rights (OHCHR), developed to complement and guide the implementation of the Palermo Protocol and bring a human rights perspective to the prevention of and fight against trafficking in human beings, state that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist

3. United States Department of State. “3Ps: Prosecution, Protection, and Prevention”. URL: <http://state.gov/3ps-prosecution-protection-and-prevention>.

4. This guide uses the term ‘trafficking in human beings for the purpose of sexual exploitation’ instead of the reductive term ‘sex trafficking’. The latter is commonly used in North American discourses, especially by activists, organisations and policymakers aiming to deliberate re-frame all forms of transactional sex as sexual exploitation, regardless of consent or the age of the individuals involved. Where the term ‘sex trafficking’ does appear in this text, for instance in quotes from other texts, it will be used in quotation marks.

and provide redress to victims”. It also states clearly that anti-trafficking measures “shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers”.⁵

Anti-trafficking policies, measures and interventions aim to have a certain intended impact. However, those same policies and measures can also have unintended side-effects, either positive or negative. This resource deals with the negative side-effects of anti-trafficking policies, in particular with their impact on sex workers, who seem primarily affected by them. Many of those effects are consciously acknowledged as unavoidable collateral damage by anti-trafficking actors that participate in the implementation of such policies, measures or interventions, e.g. restrictive migration policies; however, some of the negative side-effects have not been acknowledged, for instance due to limited knowledge of the implementing actor. Often, many of the unintended negative side-effects can be mitigated by involving the groups or communities, who might be affected, in the preparation or implementation of a policy, measure or intervention, and by taking their views into account.

This guide does not present in-depth analyses of all negative side-effects, but rather highlights the most common examples of anti-trafficking policies, measures and interventions that cause harm. In addition, this guide presents suggestions for how these negative side-effects can be mitigated.



5. OHCHR, UN. “Recommended Principles and Guidelines on Human Rights and Human Trafficking.” 2002. URL: <https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

Prevention

Prevention measures and interventions aim to reduce the risk of human trafficking occurring in the first place by influencing actors, policies and circumstances that contribute to the crime. This is what is referred to as primary prevention, which aims to prevent people from being trafficked. Secondary prevention is directed towards people who are already in situations that can be qualified as exploitation or trafficking; secondary prevention aims to improve the situations of such people. It can also be an integral part of protection measures that are described in the following chapter. Similarly, tertiary prevention seeks solutions for people who have been trafficked, aiming to prevent them from becoming susceptible to vulnerabilities that can lead to them being re-trafficked. Such measures are often realized within social rehabilitation and reintegration programmes that are usually integrated within the broader ‘protection’ paradigm.

According to the definition from the European Commission’s ‘Study on prevention initiatives on trafficking in human beings’,⁶ prevention policies aim to reduce trafficking in human beings through various actions and initiatives that include: awareness-raising public campaigning and education; capacity building and cooperation among trafficking in human beings (hereinafter THB) stakeholders; social and economic initiatives to change behaviours and cultures that tolerate trafficking in human beings; and improvement of socio-economic conditions that may foster trafficking in human beings. It is in line with actions that are foreseen by Article 18 of the EU Anti-Trafficking Directive 2011/36/EU:⁷

- information and awareness-raising campaigns,
- research and education programmes,
- regular training for officials who are likely to come in contact with victims of trafficking (e.g. regarding the identification of victims),
- interventions aiming to discourage and reduce the demand for goods and services provided by victims of trafficking in human beings.
- EU Member States are encouraged to consider criminalising those who knowingly use the services of victims.

6. European Commission. “Study on prevention initiatives on trafficking in human beings.” 2015. URL: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_prevention_initiatives_on_trafficking_in_human_beings_0.pdf

7. Buzek, J., and E. Gyori. “Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and Replacing Council Framework Decision 2002/629/JHA.” *Official Journal of the European Union* 10.101 (2011): 1-01. URL: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/directive_thb_l_101_15_april_2011_1.pdf

Due to its complexity, trafficking is related to a broad range of social issues such as poverty, discrimination, lack of social services, labour rights, migration, etc. However, critics point out that most prevention campaigns only try to raise awareness of trafficking without attempting to highlight its root causes.⁸ It is important to understand (root) causes of trafficking and to develop a clear intervention logic of prevention campaigns, clarifying causal linkages that actions could have on tackling the root causes of trafficking in human beings in specific circumstances. Focusing on specific causes that contribute to trafficking in human beings, prevention initiatives can, for instance, inform vulnerable workers about their rights, encourage the inclusion of marginalised communities or promote equality in work places, to name but a few. Such campaigns should ideally be accompanied by advocacy for policies that will help sustain the effect of the respective prevention measures. In the following part, we will explore the intervention logic that is behind prevention measures by focusing on collective responsibility campaigns; heroes and villain stories and imagery that is commonly used in prevention campaigns; prevention campaigns that use new technologies; and campaigns that address irregular migration.



8. See for instance: Sharapov, Kiril, Suzanne Hoff, and Borislav Gerasimov. “Editorial: Knowledge is Power, Ignorance is Bliss: Public perceptions and responses to human trafficking.” *Anti-Trafficking Review* 13 (2019): pp. 1-11. URL: <https://doi.org/10.14197/atr.201219131>

Collective responsibility campaign

‘Collective responsibility’ campaigns usually aim to engage a broad public and create awareness about trafficking in human beings by stressing that everyone bears responsibility for a world without trafficking and that anyone can unconsciously contribute to trafficking or to creating demand for trafficking. Such campaigns are often emotive and appeal to people’s guilt. Collective responsibility campaigns aim to provoke target groups to change their behaviour and become more aware about from whom they buy services and under which conditions products they purchase have been produced. Responsible consumers should not purchase services or products that are offered or were produced under exploitative labour situations or by unfree labourers. The notion of collective responsibility is typically employed by environmental activists, but the same principle is used in the campaigns against trafficking in human beings. Whilst the premise of such interventions seems neutral or even positive, such campaigns, if they are not carefully planned and if their potential side-effects are not sufficiently considered and mitigated, can be inherently harmful. In this chapter, we will focus on two types of such campaigns, namely campaigns that aim to:

- Address consumers and encourage them to stop spending money for goods and services produced by trafficked persons; in its essence, this is the so-called ‘End Demand’ campaign that is often referred to as ‘Don’t buy sex’ campaign.⁹
- Sensitise the public or specific target groups (such as hotel staff, airline staff or clients of sex services) so that they can report seemingly suspicious behaviour.



‘Don’t buy sex’ campaigning

‘Don’t buy sex’ campaigning is used by state and non-state actors who believe that the ‘abolition of prostitution’ will lead to the abolition of ‘sex trafficking’. The assumption behind this approach is that any commercial sexual activity is inherently exploitative and harmful, thus not in the best interest of women or men working as sex workers or society at large. Voluntary participation in sex work is seen as impossible, especially where women are concerned, and people who engage in commercial sexual activities are believed to be doing so either due to their previous victimization; a lack of awareness of the harms believed to be inherent to commercial sex; mental illness; or ‘false consciousness’. Under this approach, procurement into prostitution is equated with trafficking and those who purchase sex are seen as accomplices in human trafficking.

9. See Cyrus, Norbert, and Dita Vogel. *Learning from Demand-side Campaigns against Trafficking in Human Beings: Evaluation as Knowledge-generator and Projectimprover*. No. 9. DemandAT Working Paper. 2017. URL: https://www.demandat.eu/sites/default/files/DemandAT_WP9_Cyrus-Vogel_Campaigns_June%202017.pdf

‘Don’t buy sex’ campaigns may include the following measures and interventions:

- Information and awareness-raising about not to buy sex is spread through the media, using moral arguments, shaming those who purchase sex and profiling sex workers as powerless victims;
- Schools and educational institutions are involved and take part in such campaigns by teaching the moral imperative of the unacceptability of purchasing sex and pornography;
- “Re-education” programmes for those who have been caught buying sex (such as John schools in the US);
- Training for specialized police or other officials, usually aimed at detecting hidden markets; profiling sex workers is an integral part of such actions;
- Criminalization of the purchase of sexual services and third parties in order to prevent trafficking in human beings.

Vogel and Cyrus describe the intervention logic of such ‘Don’t buy sex’ campaigns as follows:¹⁰

Behavioural change: Men stop demanding commercial sexual services and pornography →Effect: Sexual business is no longer profitable →Trafficking in Human Beings Reduction →No women are recruited into prostitution.

The ‘End Demand’ approach is attributed to the so-called ‘Swedish model’ (sometimes erroneously referred to as ‘Nordic model’¹¹) that, ostensibly, does not criminalize selling sexual services, but criminalizes purchasers of sex and third parties.

The negative effects of this policy are well known to sex workers and include:

- Sex work is pushed underground, away from the public eye, putting people providing sexual services at greater risk to be exposed to abuse, exploitation or trafficking.
- Sex workers’ negotiation power with potential clients is limited, as due to clients’ fear of being caught, negotiations need to be very brief. This puts particularly street-based sex workers at greater risk of abuse by violent offenders posing as clients, thus severely compromising sex workers’ basic right to security.
- Sex purchase bans discourage clients, who may encounter potential victims of human trafficking, from filing police reports or providing help, since filing a report may lead to their own prosecution for breaking the law.
- Organizations by or for sex workers as well as individual activists are disregarded as ‘pimps’, whereas sex workers are perceived as mentally incompetent or disabled and as victims in need of help.

10. Ibid.

11. Skilbrei, May-Len, and Charlotta Holmström. “The ‘Nordic model’ of prostitution law is a myth.” *The Conversation* 16. 2013. URL: <https://theconversation.com/the-nordic-model-of-prostitution-law-is-a-myth-21351>

- Sex purchase bans hinder sex workers' self-organizing and prevents them from work collectively, since working together would constitute a crime, being seen as profiting from the prostitution of others or brothel keeping. In doing so, such bans violate sex workers' basic right to security.
- As sex workers are seen as victims or mentally incompetent, they are often deprived from the custody of their children.
- Equating sex work with rape erases the meaning of consent, as it does not differentiate between those clients who respect sex workers' boundaries and those who do not.
- Sex workers can be evicted from apartments by the authorities or by house owners as letting apartments to sex workers can be seen as third party involvement in human trafficking. As a consequence, sex workers face an increased risk of homelessness.
- Sex purchase bans have negative effects on sex workers' health. Due to the limitation of their negotiation power, sex workers may not be able to properly negotiate the use of condoms.



Report suspicious behaviour campaign

Whereas the 'Don't buy sex' campaigns aim at discouraging potential clients from purchasing sex, 'Report suspicions' campaigns aim at sensitising society to detect signs of human trafficking. The basic philosophy of 'Report suspicions' campaigns is the inclusion of the public or specific consumers or target groups in the surveillance and reporting of seemingly suspicious occurrences that may constitute sexual or labour exploitation.¹² Such campaigns can be implemented by non-state actors such as NGOs (which may sensitise clients of sex workers to detect signs of trafficking), so-called responsible businesses (hotels or transport companies), or by governmental or other public institutions (e.g. those in the health sector training medical staff to detect signs of trafficking).

'Report suspicious behaviour' campaigns may include the following measures and ideas:

- Awareness-raising and distribution of information about human trafficking among the general public or particular target groups, e.g. raising awareness of 'sex trafficking' not only among hotel staff but also among guests; an additional desired side-effect for such businesses is that the company will be seen as accountable and credible, giving customers the feeling they contributed to a greater good by using the services of such responsible businesses.¹³

12. Cyrus and Vogel (2017).

13. Note that investment of businesses into such campaigns is not per se a self-sacrificing act, but usually a very carefully calculated marketing strategy. Responsibility and accountability are among the most popular contemporary marketing strategies. Customers of a particular business would prefer and would even be willing to invest more if they know that the company in question has a proactive strategy to address certain social problems. On the other hand, one must question if such companies also apply this approach in other aspects of their work, e.g. whether they check their suppliers – for instance, a cleaning company that often employs migrant workers – and whether the workers are treated fairly.

- Education campaigns for staff (hotel, transport sector, medical sector, etc.); clients of sex workers or the general public is trained to recognize signs of 'sex trafficking' and educated on how to react and where to report such instances.
- Such campaigns follow the logic that by reporting such suspicions, the public, staff or clients can contribute to rescue victims and discourage traffickers to use the hotel, transport company, etc. or discourage brothel owners to engage in human trafficking and exploitation.
- Reporting such suspicions may contribute to investigations and prosecutions of traffickers.

Vogel and Cyrus describe the intervention logic of such 'Report suspicions' campaigns as follows:¹⁴

Behavioural change: the public, staff or clients watch out and are sensitised to signs of abuse and trafficking and file reports with the police. Alternatively, they inform the presumed victim on how to seek help by contacting a helpline or by letting staff at a helpline know about the presumed victim.

→Effect: Police raids that rescue presumed victims. Alternatively, NGOs help presumed victims to flee. Exploiters are prosecuted. →Trafficking in Human Beings Reduction: Exploitation and trafficking in human beings are risky for perpetrators as such crimes are not tolerated and prone to be recognized by the broader society.

These types of campaigns can result in numerous negative consequences, if these are not carefully planned. It is important for such campaigns to consider to whom the target group is encouraged to report presumed cases of trafficking and whether the presumed victims are allowed to decide whether they wish to seek help or not. Such campaigns, which often encourage people to call the police or an NGO hotline, can either be designed together with sex workers or may completely ignore sex workers' views.

Possible collateral damage and important aspects to consider in connection with such campaigns:

- 'Report suspicions' campaigns that aim to sensitise the public require significant simplifications of the phenomenon of trafficking that demonstrate simple and memorable signs of 'sex trafficking'. This is highly problematic as such simplifications contribute to the perpetuation of stereotypes and stigmatisation of marginalized populations and may thus contribute to significant harms caused to the very persons these campaigns aims to serve.

14. Please note that the cited diagram by Cyrus and Vogel exclusively focuses on report-suspicions campaigns in the sexual-services sector. See Cyrus and Vogel (2017).

○ e.g. Warning signs by the Marriot Hotel shared with its staff included minimal luggage and clothing; multiple men being escorted one at a time to a guest room; individuals who cannot speak freely or seem disoriented; guests who insist on little or no housekeeping.¹⁵ The Marriot Hotel was criticised for its campaign as it focused on women travelling alone by training employees how to ‘spot an escort’.¹⁶

- Profiling presumable victims of trafficking, especially women (women of colour, trans* women or women who do not speak the local language) who travel alone or drink or have dinner alone, feeds the notion that women are incompetent, weak, and in need of rescue and protection.
- Such campaigns can be inherently harmful as they do not distinguish between consensual adult sex work and human trafficking for the purpose of sexual exploitation.¹⁷
- Presumed victims’ consent to receive help or have police reports filed is essential. Campaigns that do not consider the wishes of presumed victims are likely to cause harm.
- Filing presumed signs of human trafficking to the police and consequent police raids can result in detention and deportation of undocumented migrant sex workers. It can also result in migrant sex workers’ losing their earnings that are necessary to support themselves and their families.
- Even for documented migrant sex workers, police raids may result in deportation and denial of re-entry as some European countries consider engaging in prostitution as reason for deportation and denial of re-entry. Thus, such campaigns may contribute to deportations of migrant sex workers rather than supporting those who are at risk of exploitation and trafficking.
- The realities of migrant sex workers are often more complex than simplified awareness campaigns spread among the public. Although working conditions can be extremely difficult and sex work may be the only viable means to re-pay their often huge debts, in many cases, migrants may still consider sex work the best option to advance their migration project. Following interventions, they may be worse off as they may lead to the loss of income and their inability to send remittances to their families. In addition, they may result in detention, deportation, criminal charges or the destruction of their reputation in their country of origin.¹⁸

15. Marriott International, Inc. “Marriott International Has Trained 500,000 Hotel Workers to Recognize the Signs of Human Trafficking.” *Cision PR Newswire*, 18 Jan. 2019. URL: <http://prnewswire.com/news-releases/marriott-international-has-trained-500-000-hotel-workers-to-recognize-the-signs-of-human-trafficking-300780898.html>

16. “When Anti-Sex Trafficking Policies Like the Marriott’s Do More Harm Than Good.” *PAPER Magazine*. 11 Sept. 2019. URL: <https://www.papermag.com/marriott-hotels-sex-trafficking-training-2627520121.html?rebelltitem=6%23rebelltitem6>

17. Hall, Jake. “Sex Workers Are Having Their Earnings Confiscated in Trafficking Stings.” *VICE Magazine*. 15 May 2019. URL: https://www.vice.com/en_uk/article/wjvxe4/sex-workers-are-having-their-earnings-confiscated-in-trafficking-stings?fbclid=IwAR1kcSPGeNK1esizN8Psg7JQCxn5Yn0Pe3ezNEWNFLs9d5negoZBlmtHyYo

18. Vogel and Cyrus (2017).

Whereas ‘Don’t Buy Sex’ campaigns inherently disregard sex workers as partners and sex workers do not wish to be associated with such campaigns, ‘Report Suspicious Behaviour’ campaigns can have significant potential to mitigate their negative effects by involving sex workers in their design. Consulting sex workers in the creation of such campaigns can significantly reduce the risk of causing harm, stimulate innovative and inclusive approaches, reduce stigma, and recognize the complex realities of sex workers.

Heroes and villain stories and imagery

As criminologist Erin O’Brien writes, “Awareness and prevention campaigns represent the ‘problem’ of trafficking in a very specific ways, creating heroes and villains by placing the blame for trafficking on some, whilst obscuring the responsibility of others.”¹⁹ Simply put, their message is: there are bad people doing bad things to good people. Such simplified campaigns using extreme stories and imagery disregard the complex realities of trafficked persons and take the focus off of migration policies, neo-liberal economies, interests of corporations, or anti-prostitution policies, all of which contribute to people’s vulnerabilities, which in turn drive them to accept exploitative working conditions. Anti-trafficking campaigns often construct a narrow understanding of the problem through the depiction of ‘ideal offenders’ and ‘ideal victims’.

The basic idea of such campaigns is that everyone – governments, businesses, NGOs and the public – is united in the fight against bad people, the traffickers that harm innocent and helpless victims.

Furthermore, victims are very often presented as passive and helpless objects in need of rescue, often illustrated with barcodes on their bodies or in chains.

The basic logic of this is that once all bad people will be prosecuted and imprisoned, and once all good people will be rescued, there will be no more trafficking. Such extremely simplified campaigns have many negative consequences.

19. O’Brien, Erin. “Human trafficking heroes and villains: Representing the problem in anti-trafficking awareness campaigns.” *Social & Legal Studies* 25.2. 2016: 205-224. URL: <https://journals.sagepub.com/doi/abs/10.1177/0964663915593410>

- They justify investments in the criminal justice system instead of reviewing and evaluating policies that directly or indirectly contribute to create environments in which exploitation and trafficking can flourish.
- Campaigns depicting women as helpless victims justify, in the public eye, controls, raids and closure of workplaces such as brothels; restrictive migration policies and practices, including border surveillance; etc.
- Individual perpetrators are seen as cause of this type of crime, rather than pointing out how societies and the global economy function and what the actual root causes of trafficking are.
- The idea that migration is inherently linked to criminality, including organized crime networks, justifies that migration and trafficking are predominantly treated as security issues.
- The attempts to pin responsibility for trafficking on businesses that, by various means, contribute to trafficking, leads businesses to support the externalization of the causes of trafficking by promoting the fight against traffickers, instead of reviewing critically how the global economy works.
- Those considered innocent victims are seen as in need of rescue, shelter, counselling and rehabilitation. Those who are not considered ‘innocent’, i.e. those who are seen as having participated in their victimisation, e.g. by agreeing to work as sex workers or by crossing borders irregularly, need to be sent back home to their families as soon as possible. They are not seen as rights holders in the criminal justice system but preferably as tools to prosecute traffickers.

While considering public policies, policymakers do not usually tend to listen to people from marginalized communities such as undocumented migrants, (migrant) sex workers, or people from an ethnic minority background. The root causes of their vulnerabilities that may lead them to accept exploitative working conditions should be given first and foremost consideration. What are the factors that contribute to vulnerabilities? Why do community members not turn to the police or the authorities if they become victims of offences or criminal acts? Why are human trafficking prevention initiatives so detached from the real needs of the most vulnerable communities? As the EU Anti-Trafficking Coordinator, Dr Myria Vassiliadou, pointed out during a conference by the EU’s Fundamental Rights Agency in June 2019, the fact that someone is vulnerable does not justify anyone to exploit or traffic those who are vulnerable.²⁰ Although one cannot argue with that, her statement indirectly points out where the priority of the EU’s policy lies: not on critically reviewing the given policy ecosystem that creates circumstances that lead people to accept exploitative working conditions and put them at risk of trafficking, but on the prosecution of the ‘bad people’.

20. Dr. Vassiliadou made this statement during a panel debate, titled “Justice for victims of severe labour exploitation”, during the conference “From wrongs to rights: Ending severe labour exploitation”. The conference was organized by the European Union Agency for Fundamental Rights (FRA) and held in Brussels on 25 June 2019. URL: <https://fra.europa.eu/en/event/2019/wrongs-rights-ending-severe-labour-exploitation>

When presenting the phenomenon of trafficking in human beings, it is important to reflect the complex realities of people who are trafficked and trapped in exploitative situations. Especially NGOs that advocate for the rights of trafficked persons should integrate the complex causes that contribute to trafficking in human beings into their campaigns and narratives by pointing out global inequalities, the weaknesses and problems of law enforcement agencies, and their effects on the rights of trafficked and exploited persons or people vulnerable to trafficking and exploitation. Anti-trafficking initiatives must avoid simplifications that present a narrow view of trafficking in human beings and create heroes, victims and villains stories.

Tech against trafficking

“The Internet has given us the possibility of being safe, work independently, have the power to negotiate terms and conditions of our work. With laws like SESTA/FOSTA in the US, they are taking this away and putting us in danger. [The] Internet is one of our most powerful tools that keeps us resilient against violence, exploitation and trafficking.”

Sabrina, migrant sex worker in Spain

As indicated by the EU study on prevention initiatives, the cyberspace creates both opportunities and challenges in this respect: “On the one hand, the application of new technologies may enable more extensive information gathering and data collection that covers wider spectrums and areas of THB. On the other hand, cyberspace acquires new attention for both THB itself and anti-THB operations, so that it requires comprehensive mapping of situations and estimation of effects by applying new methods that are different from traditional approaches.”²¹

21. European Commission (2015). p. 32.

In 2018, the United States, seen as a global leader in the fight against trafficking in human beings, stepped up its efforts against online ‘sex trafficking’ by adopting new federal legislation. This new legislation, however, conflates human trafficking for sexual exploitation with sex work. The ‘Stop Enabling Sex Traffickers Act’ (SESTA) and the ‘Allow States and Victims to Fight Online Sex Trafficking Act’ (FOSTA), also referred to as the FOSTA-SESTA package, is a controversial piece of US legislation that was intended to combat online ‘sex trafficking’.²² The law bans websites from advertising sexual services, effectively blocking sex workers fora and blacklists of violent clients. While the bill was ostensibly intended to protect women from being trafficked, many sex workers argue that it ultimately had the opposite effect.²³ Many sex workers had to return to street-based sex work, which is not as safe as finding and screening clients online. Furthermore, the FOSTA-SESTA package’s broad language, which indisputably conflates consensual adult sex work and ‘sex trafficking’, renders those criminals who advocate for and provide resources to adult, consensual sex workers and actually hinders efforts to prosecute human traffickers and aid victims.²⁴

Additionally, it has been acknowledged that through the loss of online classified advertisement sites, the FOSTA-SESTA package deprives law enforcement of an important tool in the fight against human trafficking, by making it more difficult to locate potential victims of trafficking and build cases against traffickers.

The effect of the FOSTA-SESTA package has also impacted sex workers working in Europe, as tech companies often work globally, and many of them are based in the US. There have been shut-downs of social media profiles, e.g. of the Facebook group of Belgian sex workers’ collective UTSOPI, as well as of ‘personals’ sections on advertisement sites such as VivaStreet France and web sites of sex workers and sex workers’ collectives that aim to unite sex workers and better protect them. Many sex workers report being stressed about their bank accounts and online payments, e.g. with PayPal, as there were cases of sex workers’ bank accounts being frozen after advertising services online.

Modern technologies play a significant role in the lives of sex workers and they are their main tools not only to find clients but also to protect themselves by warning each other about violent clients. The internet provides sex workers with the opportunity to work independently without third party

22. Burns, Tara. “The Deadly Consequences of the Anti-Sex Trafficking Law.” *The Crime Report*. 4 June 2018.

URL: <https://thecrimereport.org/2018/06/04/the-deadly-consequences-of-the-anti-sex-trafficking-law>

23. Dickson, EJ. “Sex-Work Decriminalization Is Becoming an Issue For 2020.” *Rolling Stone Magazine*. 6 March 2019. URL: <https://www.rollingstone.com/culture/culture-features/sex-work-decriminalization-bernie-sanders-kamala-harris-election-803354>

24. Greene, David. “EFF Sues to Invalidate FOSTA, an Unconstitutional Internet Censorship Law.” *Electronic Frontier Foundation*. 28 June 2018. URL: <https://www.eff.org/deeplinks/2018/06/eff-sues-invalidate-fosta-unconstitutional-internet-censorship-law>

agents, as well as to mobilise, connect with each other to reduce isolation and foster peer support. Ultimately, they use the internet to protect themselves and their peers from exploitation and trafficking. Moreover, according to the Global Network of Sex Workers’ Project’s consultation with sex workers, information and communication technologies are perceived as reducing the risk of acquiring HIV or other STIs as it fosters the ability to safely negotiate terms and conditions of the services provided by sex workers.²⁵

Sex workers benefit from numerous applications that have mainly been developed for the sake of their safety, such as Artemis’ Umbrella in Finland,²⁶ LEXI App in Switzerland,²⁷ or Gfendr in Canada.²⁸ Such apps can be presented as examples of how communities at risk of trafficking and exploitation can remain resilient. This resilience, however, is rarely acknowledged by anti-trafficking actors and rarely promoted as an approach that can effectively prevent trafficking. Recently, Google temporarily disabled key functions on the Ugly Mugs App that used to warn sex workers about dangerous clients in Ireland.²⁹ The Ugly Mugs app allowed sex workers to screen incoming calls and text messages for potential dangers and use a traffic light system (yellow, orange, red) to review clients. The app also allowed users to manually search for phone numbers in a database to check if they are associated with potentially dangerous clients.

The logic model in the tech against trafficking is that utilizing new technologies against trafficking will contribute to disrupt human trafficking networks (often interchangeably described as abolition of prostitution) that operate online (online sex advertisements). In addition, it will also prevent trafficking in human beings by allowing at-risk populations to utilize tech tools. The effect of this is that it will be more difficult for perpetrators to operate in the cyberspace and that people who are at risk of trafficking can use new technologies to better protect themselves. (Sex workers, however, are often excluded from this logic.) As a result, it will be difficult to traffic human beings online (and more often than not, offering sexual services online will be impossible, thus reducing the demand for prostitution, at least according to this logic model).

The collateral damages are substantial, and their ultimate cause is the conflation of ‘sex trafficking’ with sex work. Although sex workers are considered extremely

25. Global Network of Sex Work Projects (NSWP). “ICT and Sex Work: The Smart Service Provider’s Guide.” 2017. URL: https://www.nswp.org/sites/nswp.org/files/the_smart_service_providers_guide_to_ict_and_sex_work_nswp_-_2016.pdf.

26. NSWP. “Artemis’ Umbrella: a new security app for sex workers.” 27 March 2018. URL: <https://www.nswp.org/news/artemis-umbrella-new-security-app-sex-workers>; See also Social Centre X “Artemis’ Umbrella.” URL: <https://www.artemisumbrella.com/en/etusivu>

27. FIZ Advocacy and Support for Migrant Women and Victims of Trafficking. “LEXI: Eine Mobile App für Sexarbeitende.” URL: <https://www.fiz-info.ch/de/News/Neuvmeldung?newsid=44>

28. Noël, Brigitte. “New App Aims To Improve Safety of Sex Workers.” *VICE Magazine*. 18 Jan. 2018. URL: https://www.vice.com/en_ca/article/mbp45y/new-app-aims-to-improve-safety-of-sex-workers; See also: Gfendr. URL: <http://gfendr.ca>

29. “Sex workers say Google could put lives at risk if safety app functions disabled.” *Irish Examiner*. 20 Feb. 2019. URL: <https://www.irishexaminer.com/breakingnews/ireland/sex-workers-say-google-could-put-lives-at-risk-if-safety-app-functions-disabled-905837.html>

vulnerable to trafficking, they are not seen as partners in the fight against trafficking and rarely benefit from such tech business initiatives. On the contrary, the exclusion of sex workers from online spaces has severe consequences for the community.

- Excluding sex workers from online spaces and closing sex workers' websites directly exposes most sex workers to greater safety risks as they can no longer advertise their services or share information about violent clients.
- It also pushes indoor sex workers outdoors where they face a greater risk of experiencing violence.
- Furthermore, it hinders sex workers' online mobilization, unionization and self-help efforts.
- In turn, this gives third parties and intermediators more power as sex workers are losing their independence, thus greatly exacerbating the risk of experiencing violence and exploitation.
- Another risk is that some online tools can be misused for surveillance, tracking and gathering information about sex workers without their consent, thus contributing to the stigmatization and profiling of people working as sex workers.
- In extreme cases, such as the United States' FOSTA-SESTA package, tech measures to fight trafficking in human beings directly or indirectly criminalize those who provide services to sex workers.
- Sex workers' health is also at risk, e.g. through a greater prevalence of HIV and other STIs, as excluding sex workers from online spaces deprives them of proper means to screen and negotiate with clients about the terms and conditions of the provision of sexual services.

It is important to avoid the conflation of sex work with human trafficking for the purpose of sexual exploitation while designing and implementing any measures to address online trafficking for sexual exploitation. Meaningful involvement of sex workers in the design, implementation and evaluation of interventions can significantly contribute to reduce harm and develop smart and well-targeted online campaigns that do not adversely affect the safety of sex workers. Anti-trafficking actors need to acknowledge that the internet plays a significant role for sex workers' resilience against trafficking and exploitation in the sex industry.

Fight against irregular migration

Trafficking in human beings is addressed within the broader landscape of migration regulations and laws. The internal mobility in the EU provides EU citizens with the opportunity to work and reside in different EU member states, including to work as sex workers in countries where sex work is legalised and regulated under certain conditions. EU states that put in place laws that legalise and regulate sex work under certain conditions do not provide legal avenues for non-EU citizens to migrate for the purpose of engaging in sex work; migrant sex workers are thus forced to hide their intention to work as sex workers and migrate outside of the existing regulatory system.

Undoubtedly, there is a strong link between migration, migration policies and trafficking in human beings. Therefore, migration policies must be acknowledged as a context against which initiatives seeking to prevent trafficking in human beings must be evaluated. Safe migration pathways would significantly contribute to prevent trafficking in human beings. However, when considering safe migration pathways, European states consider only a small number of migrants. Most aspiring migrants – people moving for work, study, protection and family – face restrictive migration and visa policies that make it difficult or impossible to travel regularly and safely and to obtain and maintain a residence permit. More often than not, resident permits are awarded depending on particular personal circumstances or employment relationships, placing people in situations of vulnerability and dependence, thereby increasing the risk of experiencing exploitation and violence. At the same time, undocumented migrants commonly face arrest, detention and deportation if they report situations of violence to the authorities, thereby reducing their negotiating power, denying their access to justice, and making it easier to exploit them with impunity. As such, restrictive migration policies force aspiring migrants into a position of structural vulnerability by channelling them into unregularised migration routes, undocumented migrant statuses and irregular work where they are left with few options except to rely on exploitative smugglers, partners or employers.³⁰

Whereas using limited safe migration pathways as a means to prevent trafficking in human beings addresses only a small number of migrants, the remaining part of aspiring migrants is addressed by other anti-trafficking efforts. Officially described as 'prevention of illegal migration and trafficking', those efforts effectively amount to a 'stay at home' campaign. This prevention of 'illegal migration' as a means of prevention of trafficking in human beings is introduced at all levels of the migration process:

³⁰. European Commission (2015).

- **Source countries:** In migrants' source countries, millions of euros are invested annually for projects that aim to keep aspiring migrants at home by providing re-qualification courses or supporting livelihood programmes. Although such initiatives may be appreciated by local communities, their impact is minimal in comparison with remittances that successful migrants can send back to their home countries. According to a World Bank report, in 2018, remittances to low- and middle-income countries (US\$462 billion, excluding China) were significantly larger than foreign direct investment flows (\$344 billion) and continue to be more than three times the size of official development assistance, which covers programmes that aim to keep aspiring migrants at home.³¹
- **During the migration process:** Training of guards to control borders, including coast guards in the Mediterranean Sea.
- **Destination countries:** In the countries of destination, where the threats of detention and deportation contribute to irregular migrants' vulnerabilities, the responsible authorities try to detect undocumented migrants (with the aim to deport them) and identify trafficked person (with the aim to use them in criminal proceedings against their traffickers before, in most cases, subsequently returning them to their home countries).

The fight against irregular migration (and trafficking in human beings) is not only trying to engage authorities that are directly responsible, such as immigration authorities, but also to expand the responsibility to other actors, such as criminal police (if undocumented migrants are involved in crimes, they shall be reported to immigration), labour inspection authorities (complaints by undocumented workers about their employers, unpaid wages or labour law violations will result in deportations), and health care services. In addition, organizations that aim to assist undocumented migrants can in some cases be held criminally liable or be subject to charges, leading to lengthy and costly criminal trials before (sometimes) being acquitted, for facilitating irregular migration, as numerous cases in Europe have shown.³² This phenomenon is known as 'criminalization of solidarity'.

The collateral damages are significant. Restrictive migration policies –limiting safe migration routes, preventing undocumented migrants from reporting crimes to the police or filing complaints for exploitation - are thus one of the root causes of trafficking in human beings.

31. "Record High Remittances Sent Globally in 2018." *World Bank*. 8 April 2019. URL:

<https://www.worldbank.org/en/news/press-release/2019/04/08/record-high-remittances-sent-globally-in-2018>

32. Carrera, Sergio, et al. "Fit for purpose?: the Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 update." *Directorate-General for Internal Policies of the European Union*. 2018.

URL: [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL_STU\(2018\)608838_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL_STU(2018)608838_EN.pdf)

Many human rights bodies recommend a 'firewall' that would legally, technically and organizationally separate immigration enforcement and service provision in the areas of health care, social services, education and access to justice. This 'firewall' would ensure that people could access services, approach authorities to file complaints and seek assistance and justice without any risk of their personal data being passed on or accessed for immigration enforcement purposes.³³

In 2016, for instance, the European Commission against Racism and Intolerance (ECRI) of the Council of Europe (CoE), issued a recommendation to safeguard irregular migrants from discrimination. The ECRI recommended that member states' governments should "establish safeguards ensuring that irregularly present migrants who are victims of crime are aware of their rights and are able to report to law enforcement authorities, testify in court and effectively access justice and remedies without the risk of the sharing of their personal data or other information with immigration authorities for the purposes of immigration control and enforcement."³⁴ **Similar safeguards are recommended across various public services, institutions and spaces. Some European countries have introduced some aspects of a firewall; however, this type of systematic measure is rather rare in Europe.**

33. See, for instance: "Firewall." *Platform for International Cooperation on Undocumented Migrants (PICUM)*. URL: <https://picum.org/firewall-3>

34. "Recommendation No 16 on Safeguarding Irregularly Present Migrants from Discrimination" (adopted on March 16, 2016). *European Commission against Racism and Intolerance (ECRI) of the Council of Europe*. URL: <http://hudoc.ecri.coe.int/eng?i=REC-16-2016-016-ENG>

Protection

Trafficking in human beings represents a gross human rights violation. Over the past two decades, a consensus has formed that trafficking in human beings requires a human rights-based approach, placing trafficked persons' human rights at the centre of anti-trafficking measures, interventions and policies. The rights of trafficked persons and other vulnerable populations must not be adversely affected by such measures, interventions and policies. Interventions to protect trafficked persons should include actions that improve the situations of people who were exploited or trafficked and prevent them from being re-trafficked.

In this part, this guide will focus on the following aspects of protection:

- Identification of trafficked persons through rescue operations
- Formal identification
- Voluntary return and reintegration
- Access to compensation

Rescue operations

The identification of trafficked persons is a pre-condition for them to actually be protected and given access to justice. One of the ways in which identification is realized is through police operations, including raids. Although the intention may be to disrupt organized criminal networks, in many cases, such rescue operations are not welcomed by the 'beneficiaries' and even cause harm. More often than not, such rescue operations are unsuccessful and do not lead to the identification of trafficked persons. In addition, raids disproportionately affect people working as sex workers, as in most European countries, sex work is not recognized as legitimate work and related businesses are treated as illegal. The presumption is that the environment in such businesses allows organized crime to flourish and attracts undocumented migrants. As sex workers from numerous countries have pointed out, raid and rescue operations are often used to 'manufacture' victims, forcing women to say they were trafficked, or to detect undocumented migrants and deport them.³⁵

35. Stacey, Maria and Borislav Gerasimov (eds.). "Sex Workers Organizing for Change: Self-representation, community mobilization, and working conditions." Global Alliance Against Traffic in Women (GAATW). 2018. URL: <https://www.gaatw.org/publications/SWorganising/SWorganising-complete-web.pdf>

The US State Department's Trafficking in Persons (TIP) Report of 2010 describes the difference between 'blind sweeps' and 'smart raids': "Smart' raids can free trafficking victims while minimizing harm to others. They are based on real evidence, have a well-defined goal grounded in law, and are planned to ensure the safety of everyone involved. They should include arrangements to segregate supervisors, to conduct victim-centered interviews, to cross-reference victims' accounts, and to quickly transition to post-rescue care and shelter for identified victims. On the other hand, some raids are 'blind': they are executed against a target without adequate prior attempts to verify the existence of trafficking victims in those locations. They are based on assumptions, or are simply round-ups meant to clean out a red light district. They often do not have a legal theory or any evidentiary basis driving them, and do not include victim identification processes. 'Blind' raids can lead to poor results while harming those not involved in human trafficking."³⁶

The logic of 'blind' rescue operations relies on stereotypical assumptions about human trafficking that produces measurable outcomes (number of rescue operations in order to implement anti-trafficking policies) and relies on the concepts of heroes (rescuers), victims and villains. This limited view fails to respond adequately to the complexities of people working as sex workers, including irregular migrants who are vulnerable to exploitation and trafficking and not protected by legislative frameworks.

The most recognized negative effects of rescue operations are:

- The way in which rescue operations are carried out often causes trauma and post-traumatic stress disorders (PTSD) for their presumed beneficiaries.
- As many sex workers who experienced such rescue operations have stated, their properties and assets, including their earnings, are often confiscated with the argument that they are required as evidence in criminal proceedings.
- Rescue operation often lead to detentions and deportations of undocumented migrants if they are not considered trafficked persons.
- Rescue operations often lead to evictions from established working environments, both where migrant and domestic sex workers are concerned.
- Third party laws that criminalize those considered to be profiting from the prostitution of others are often applied, especially when those who were 'rescued' do not fall into the 'victim of trafficking' category. Through third party laws, sex workers working collectively can be held criminally liable for 'brothel keeping', even in cases where as few as two sex workers share costs for premises or living spaces.
- Where 'beneficiaries' of rescue operations do not identify as victims, they can be left without assets, evicted from work and living places and without access to services. This leaves them considerably worse off than prior to the raids and more vulnerable to violence, exploitation and trafficking.

36. United States Department of State. "Blind sweeps and smart raids." *Trafficking in Persons Report* 2010. June 2010. URL: <https://2009-2017.state.gov/documents/organization/142979.pdf>

Apart from avoiding the abovementioned ‘blind sweeps’, authorities should consult sex workers on how to systematically mitigate negative effects of police operations, reduce harm and develop smarter interventions. If sex workers were to be considered allies in anti-trafficking efforts, enjoyed police protection and saw their safety prioritized, sex workers themselves could detect sites and situations where exploitation, trafficking or commercial sexual exploitation of children occurs.

Formal identification

Detecting (or registering) trafficked persons represents a key step to ensure that they are treated as rights holders who can fully enjoy and exercise their rights. However, only victims who are formally identified by competent authorities, are willing to cooperate with law enforcement authorities, and whose testimony is seen as useful in criminal proceedings can be seen/considered as ‘rights holders.’

According to a 2018 study by the European Commission, people are considered ‘presumed victims’ when authorities have reasonable grounds to believe they might have been trafficked but have not yet been formally identified by the relevant formal authority as a trafficked person or if the person in question has rejected being formally or legally identified as trafficked. People are considered ‘identified victims’ when they have been formally recognised as victims of human trafficking by the relevant formal authority in one of the member states.³⁷ Access to assistance and services should be available for all presumed victims of trafficking, although the services can be of a very limited duration. This is usually fulfilled by granting a so-called ‘reflection period’ with a minimal length of 30 days to all ‘presumed’ victims. The reflection period is in fact a temporary residence permit (in some countries in a form of postponement of the exit order). Reflection periods are accompanied by the provision of a variety of services, allowing victims to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities. Although a 2005 convention by the Council of Europe stipulates that member states should “ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness”,³⁸ some conditions can be set for granting reflection periods and

37. Francis, B., et al. “Data collection on trafficking in human beings in the EU.”. 2018. p.13. URL: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_data-collection-study.pdf

38. Council of Europe. “Convention on Action Against Trafficking in Human Beings.” 16 May 2005. Article 12 (6). URL: <https://rm.coe.int/168008371d>

assistance. Those may include, for instance, that the victim must break the ties with the traffickers and accept the assistance of a specialized centre. This means that this supposed ‘unconditionality of assistance’ for all victims of trafficking is limited by the framework of the reflection period, which varies from 30 days to 6 months in different European countries. Furthermore, the interpretation of ‘breaking the ties with traffickers’ may also be interpreted as banning the presumed victim from engaging in sex work. In some countries, victims must accept services (often residential) from government-appointed service providers as a pre-condition for being eligible for reflection periods. Before reflection periods expire, it is expected that victims decide whether or not to cooperate with law enforcement authorities. In parallel, law enforcement authorities decide whether victims’ testimony and information will sufficiently serve criminal proceedings. Based on this, trafficked persons are either offered residence permits and follow-up services or other alternatives, including voluntary return (accompanied by exit orders). It is not unusual for victims who are not offered residence permits and follow-up services to terminate their relations with the authorities and services providers and remain undocumented in the territory of their destination country.

- The follow up services are usually available only to those who are acknowledged as identified victims of trafficking.
- For persons who are denied the status of ‘trafficked person’, there are either no or only limited follow-up services available. The availability of services can also be limited due to uncertainty among service providers about whether they will risk being charged with facilitating irregular migration and having their funding restricted, if they continue providing services for persons who choose to remain undocumented in a destination country rather than accepting their voluntary return to their home country.
- Services can be related to the facilitation of voluntary returns (return counselling) and in some cases extend to re-integration programmes for people who were not recognised as victims of trafficking.

EU member states vary in how they manage these processes. In some European countries the identification of trafficked persons falls entirely within the competence of law enforcement agencies and depends in practice on presumed victims’ readiness to cooperate with investigations.³⁹ Some countries follow the recommended approach and use multidisciplinary teams that are composed of various stakeholders, not only the police. In the Netherlands, for instance, an independent expert body has been established that assesses each case, without requiring cooperation with law enforcement authorities. The threshold to be identified and acknowledged as trafficked person, however, remains high. In fact, not being formally identified does not mean that the person has not been trafficked. Often, there is insufficient evidence to determine whether a person was trafficked. Those who do not meet the criteria to be formally identified as trafficked, or who, for whatever reason, do not

39. Council of Europe. “4th General Report on GRETA’s Activities.” 2016. URL: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805aa45f> [GRETA stands for ‘Group of Experts on Action against Trafficking in Human Beings’]

want to be seen as trafficked or do not want to cooperate with law enforcement authorities, remain in an undocumented situation. Undoubtedly, this leaves them in vulnerable situations and at risk of trafficking, as there are limited options for them to seek help and assistance.

The logic behind the formal identification of trafficked persons is that those who are considered victims of trafficking enjoy ‘exclusive rights’ in comparison with victims of other crimes, namely, the availability, under certain conditions, of residence permits for the purpose of protection (for limited periods).

Collateral damages of formal identification systems can include:

- Lack of protection from further exploitation for those who are not deemed victims of human trafficking
- The threshold to be formally identified is high and varies in different European countries. Whereas in some European countries, identified trafficking victims enjoy rights regardless of cooperating with criminal investigations, in the other European countries, they may be returned to their countries of origin, regardless of them being willing to cooperate with criminal investigations if their information and testimony is considered insufficient.
- In some European countries, the formal identification of trafficking victims depends, in practice, on presumed victims’ readiness to cooperate in criminal investigations.
- In many European countries, ‘victim’ status can be withdrawn if the person in question continues or returns to work as sex worker.
- In many European countries, ‘victim’ status can be withdrawn when criminal proceedings are ‘re-qualified’ as some other crime that is easier to prosecute or when criminal proceedings are discontinued.
- Delivery of victim support services by providers that consider sex work as the ultimate form of violence against women can hardly address the more complex realities of exploitation in the sex industry and reliably respond to trafficked sex workers’ needs.

It is important to acknowledge that many people who have not been formally identified as trafficked persons or have decided not to cooperate with law enforcement authorities and are thus not entitled to follow-up services and residence permits may still be in need of services beyond those that are provided within the anti-trafficking framework, as they are often left in vulnerable positions with few possibilities to regularise their status, restricted access to services, and at risk of arrest, detention and deportation. Reasonable funding for sex workers’ rights organisations and collectives that respect and understand the complex realities of migrant sex workers could provide a social safety net for those who fall through the anti-trafficking support system. Funding of services provided by sex workers’ rights collectives and their inclusion into the National Referral Mechanism (NRM)⁴⁰ could significantly contribute to prevent abuse, exploitation and trafficking of those left behind.

Voluntary return and reintegration

Voluntary and assisted returns are central services usually available to both presumed and formally identified victims of trafficking. Voluntary and assisted returns can be found in most national action plans and strategies that aim to combat trafficking in human beings throughout Europe. According to a report by the National Police Board of Sweden – a country that criminalizes the purchase of sexual services – not only victims of trafficking, but also women who were “subject to prostitution” should be offered voluntary returns as an alternative in order to return to their country more safely and enable them to leave prostitution and minimise the risk of being re-trafficked, and to reduce their human suffering and increase their sense of safety and security.⁴¹

40. “A National Referral Mechanism (NRM) is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society.” See “National Referral Mechanisms - Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook.” OSCE Office for Democratic Institutions and Human Rights (ODIHR). 2004. URL: <https://www.osce.org/odihr/13967?download=true>

41. “Situation Report 11. Människohandel för sexuella och andra ändamål. Trafficking in human beings for sexual and other purposes.” Swedish National Police Board. 2010. URL: <https://www.politieacademie.nl/kennisenonderzoek/kennis/mediatheek/PDF/83298.pdf>

There has been significant criticism of voluntary return programmes that are funded by host states and implemented by the UN's migration agency, the International Organization for Migration (IOM). Critics point out that 'voluntary returns' amount to deportations and can thus not be described as 'voluntary'. People who are not recognised as victims of trafficking are effectively pushed into a corner after governments strategically cut them off from basic services and threaten them with deportation. The relationship between the threat of deportations and 'Assisted Voluntary Return and Reintegration (AVRR)' measures hence constitutes a carrot and stick strategy.⁴²

The assistance the IOM provides returnees is by its nature short-term and piecemeal. Given the fact that assisted voluntary returns are carried out even into countries that are politically unstable, where human rights and security standards remain highly questionable, the IOM can neither ensure that returnees will have access to justice in their home countries, nor can it ensure that they will enjoy personal security. The agency's website, while celebrating individual success stories, acknowledges that it does not monitor voluntary returnees (though if an individual receives reintegration assistance upon return, contact is maintained for up to a year). Governments that fund the voluntary return programmes do not monitor returnees' reintegration⁴³ at all. Although there has not been any systematic monitoring of the effects of AVRR, the available research into the effects of assisted voluntary returns point out the following shortcomings:

- According to a 2009 ILO study, returning home carries with it a complex set of difficulties for victims of trafficking. Many face the same pressures upon return that had prompted their departure.⁴⁴
- Whereas in Europe, the women were vulnerable to deportation, back in their country of origin, women were vulnerable *because* of deportation.⁴⁵ Post-return vulnerabilities are largely attributable to failed migration projects, and their main cause is often the return itself.
- Returned 'failed' migrants often face stigmatization and socioeconomic marginalization. While away, they may have also lost their homes and social networks.
- Assisted voluntary returns can be accompanied by a ban on re-entering the EU for a certain period of time, if the person has not left in the time specified in a return decision, though people who cooperate with criminal proceedings against smugglers and traffickers should not by law be issued with an entry-ban.
- The reality for women facing return to a country in crisis is frightening. In many of these fragile states, gender-based violence and persecution remain constant threats.
- There is a danger of secondary or tertiary displacement for women unable to settle safely after returning.

42. Paasche, Erlend, May-Len Skilbrei, and Sine Plambech. "Vulnerable Here or There? Examining the vulnerability of victims of human trafficking before and after return." *Anti-Trafficking Review*. issue 10. 2018. pp. 34–51. URL: <https://doi.org/10.14197/atr.201218103>. See also URL: www.antitraffickingreview.org/

43. Frances Webber. "The Politics of Unvoluntary Returns". *Institute of Race Relations*. 11 Nov. 2010. URL: <http://www.irr.org.uk/news/the-politics-of-voluntary-returns>

44. Lisborg, Anders, et al. "Going Back–Moving on: A synthesis report of the trends and experiences of returned trafficking victims in Thailand and the Philippines." *International Labor Organisation* (ILO). 2009. URL: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_116030.pdf

45. Plambech, Sine. "Between 'Victims' and 'Criminals': Rescue, deportation and everyday violence among Nigerian migrants." *Social Politics*. vol.21. issue 3. 2014. p. 395. URL: <https://doi.org/10.1093/sp/jxu021>

- Most government schemes to promote returns that are linked with investment in small businesses have been viewed as failures. The short-term and limited nature of the assistance provided, and the lack of monitoring, makes the IOM's claim to "contribute to a more sustainable return" somewhat hollow.⁴⁶
- Signing a voluntary return declaration implies that the person no longer fears persecution and is likely to render any future claim – should conditions in the return country change for the worse – less credible in the eyes of the law. An application for asylum would face serious legal barriers given that the applicant has returned home in the past.⁴⁷
- Decisions to migrate and investments in migration were often made at the household level. It frequently involves heavy debts that are nearly impossible to repay. Return spells the end of remittances, both a substantial contribution to the household economy and a source of social pride, and turns returnees into economic burdens instead of breadwinners.⁴⁸

Aside from 'voluntary' returns, alternative avenues should be offered to regularise residency in the destination countries of undocumented migrants who are presumed victims of trafficking, in order to enable them to make informed decisions to actually return voluntarily. People who consider returning voluntarily should be provided sufficient and adequate return counselling that will assess all individual risks and opportunities. Especially for persons who fell victim of commercial sexual exploitation as well as sex workers who worked under exploitative conditions, it is essential that counselling services are provided in a respectful manner, free from judgment and stigmatisation. Such counselling must take into account how to deal with the potential stigmatisation upon one's return (either as 'failed migrant' or due to the fact that one was trafficked into or exploited in the sex industry), as well as the threats associated with money lenders that helped facilitate the initial migration project. Prospective returnees should be given the chance to participate in the preparation of return process and to influence it. The wish of returnees to settle in another region of their home country should be respected.⁴⁹ Returns should be accompanied by meaningful monitoring and adequate reintegration support that takes into account individuals' circumstances.

46. Webber (2010).

47. Encinas, Monica. "Assisted Voluntary Return: implications for women and children." *Forced Migration Review*. 52 (2016): 84. URL: <https://www.fmreview.org/solutions/encinas>

48. Paasche et al. (2018).

49. See: Danish Refugee Council. "DRC Return Policy: Positions and guiding principles for DRC's engagement in return of refugees, IDPs and rejected asylum seekers." October 2018.

URL: https://drc.ngo/media/5209589/drc-return-policy_external_oct-2018_update-jan2019.pdf

Access to compensation

Both the EU Anti-Trafficking Directive and the Council of Europe's Anti-trafficking Convention contain strong provisions regarding the access to compensation by victims of trafficking.⁵⁰ Similarly, the right to claim compensation is inherently included in the EU Victims' Rights Directive that establishes the right to claim compensation for any crime-related offence.⁵¹ Compensation for victim of a crime means the compensation for unpaid wages, compensation for physical and emotional pain suffered or quantifiable monetary losses. In particular, the compensation for victims of trafficking is the focus of many international bodies such as the Council of Europe and its monitoring body- the Group of Experts on Action against Trafficking in Human Beings known as GRETA, as well as EU institutions (in 2017, the EU even appointed an Adviser on access to compensation for victims of crime),⁵² the Organization for Security and Co-operation in Europe (OSCE) and others.

It is often pointed out that trafficking is one of the most profitable crimes globally, thus the freezing and seizure of assets of traffickers should be a priority. From the victims' perspective, compensation should play a crucial role in the prevention of re-trafficking and as a means of re-integration. Compensation can be claimed from both the perpetrator and the state. States have usually dedicated compensation funds for victims of crime. The compensation claim for victims (of trafficking) remains challenging, although there have been significant improvements during the past decade and it remains a strategic policy focus regarding victims' protection. One of the key problems lies in the diversity of prostitution policies throughout Europe. Compensation claims for unpaid wages by victims of trafficking for the purpose of sexual exploitation, whose cases are prosecuted under the jurisdiction of a European state that recognises sex work as a legitimate form of work, fair significantly better than those of victims whose cases are prosecuted in jurisdictions where sex work is not recognised as work. The recognition of sex work as legitimate form of work is particularly important to successfully claim compensation for unpaid wages. The Netherlands, for instance, provide victims of trafficking for the purpose of sexual exploitation with the opportunity to claim compensation for unpaid wages, which corresponds with the average earnings in the sex industry.

50. Buzek and Gyori (2011); Council of Europe (2005).

51. "Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA". *Official Journal of the European Union*. 25 October 2012.

URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029&from=EN>

52. European Commission. "Commission appoints Ms Joëlle Milquet as Special Adviser for the compensation of victims of crime." 4 October 2017. URL: https://europa.eu/rapid/press-release_MEX-17-3711_en.htm.

In contrast, in Bulgaria, for instance, the proceeds from forced sex work are confiscated by the state and are not made available for victims of trafficking, under the pretence that sex work is immoral and victims of trafficking can therefore not be compensated for unpaid wages from confiscated proceeds of such immoral actions. This creates a double standard in the EU where in some states, victims can be compensated for unpaid wages from confiscated proceeds, whereas in other states, unpaid wages are not taken into consideration if people were trafficked into the sex industry, as they are not considered as having performed work, but as having been exploited in (illegal) prostitution, for which it is not possible to claim unpaid wages. In this case, the moral assumptions around prostitution are the cause of the collateral damage, where instead of the victim, the state profits from the confiscated proceeds.

Only the recognition of sex work as labour would provide all victims of crime throughout Europe equal rights to claim compensation for unpaid wages in the sex industry. While people trafficked into the sex industry remain discriminated against in many European countries, it is therefore important to consider the best interest of the victim while deciding under which jurisdiction the case will be prosecuted (and under which jurisdiction the victim will be able to claim compensation) in cross border cases.

Prosecution

Trafficking in human beings is by its definition a relatively new crime that was defined internationally only 20 years ago in the Palermo Protocol.⁵³ The definition of trafficking in human beings was agreed as a political compromise between camps with different views, leaving some terms (such as ‘exploitation’ or ‘abuse of position of vulnerability’) undefined. The definition of trafficking has also led to the conflation of trafficking in human beings with consensual adult sex work. The prosecution of perpetrators of human trafficking, which is at the centre of the criminal justice approach to trafficking, is considered one of the key measurable indicators used as benchmark for the assessment of the successes and failures of countries’ anti-trafficking policies. According to the 2019 US TIP report, in 2018, there were 11,000 prosecutions and 7,481 convictions in cases involving trafficking in persons around the world.⁵⁴ The numbers are relatively low in comparison with the number of registered victims (85,000) and minimal in comparison with the ILO’s latest estimate of victims of forced labour (24,9 million).⁵⁵ Therefore, human trafficking is sometimes called one of the most profitable crimes where perpetrators face relatively low risks. The pressure on prosecutions is also obvious from the 2019 US TIP report, as, due to low number of prosecutions, several European countries (e.g. Germany, Denmark or Italy), which have traditionally been ranked in the Tier 1 group for countries that fully comply with the TVPA’s minimum standards, have been downgraded to Tier 2. Although traffickers should be severely punished, prosecution-oriented anti-trafficking policies, which emphasize and reward the quantity of prosecutions rather than the quality, carry the risk that in countries with weak or dysfunctional criminal justice systems, non-exploitative third parties involved in sex work or marriage brokers may be prosecuted as traffickers in order to earn credits in front of the international community.⁵⁶

53. “Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.” United Nations. 15 November 2000. URL: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=XVIII-12-a&chapter=18&lang=en

54. United States Department of State. *Trafficking in Persons Report* 2019. June 2019.

URL: <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>

55. ILO “Global Estimates of Modern Slavery: Forced Labour and Forced Marriage.” 19 September 2017. URL: https://www.ilo.org/global/publications/books/WCMS_575479/lang-en/index.htm

56. For more information, see Gallagher, Anne T. “The Problems and Prospects of Trafficking Prosecutions: Ending impunity and securing justice.” *Anti-Trafficking Review*. issue 6. 2016. pp. 1–11. URL: <https://doi.org/10.14197/atr.20121661>. [www.antitraffickingreview.org]

Furthermore, because of the confusing (or incomplete) definition of trafficking, in some countries, sex workers may be prosecuted as traffickers, especially in cases where they help others to work as sex workers outside their home countries, without using force, fraud or other means of coercion. This is well documented in the case of Nigerian women who were initially trafficked, then repaid their debts and became madams, bringing other women abroad to work as sex workers, and who were consequently prosecuted as traffickers. It has been acknowledged by numerous experts that the criminal justice approach is failing to serve victims of trafficking. This approach produces ever more policies and laws that criminalize greater areas of human life, intensify policing and surveillance, and emphasise more prosecutions, detentions, and incarcerations.⁵⁷

In this chapter, the focus will be on the following issues that may cause collateral damages for (migrant) sex workers: accessibility and reliability of the criminal justice system for (migrant) sex workers and the conditionality of right of residency linked to cooperation with criminal proceedings.

Accessibility and reliability of criminal justice system for (migrant) sex workers

The Committee on the Elimination of Discrimination against Women (CEDAW) acknowledges in its “General Recommendation on Women’s Access to Justice”⁵⁸ that women are “disproportionately criminalized due to their situation or status, for instance women in prostitution [and] migrant women” and recommends to “[a]bolish discriminatory criminalization, and review and monitor all criminal procedures to ensure they do not directly or indirectly discriminate against women”.⁵⁹ Migrant sex workers, face a double barrier (due to their immigration status and due to working as sex workers) that prevents them from approaching the justice system. In several European countries (e.g. Norway, Finland or Sweden), working as sex worker constitutes grounds for the withdrawal of one’s residence permit and denial of re-entry for hitherto legally residing sex workers. Similarly, undocumented migrant sex workers that come into contact with law enforcement authorities are usually arrested and subsequently required to leave the country. These factors significantly contribute to the vulnerabilities of migrant sex workers who are prone to either labour-related offences (wage manipulation, wage deductions, excessive working hours, etc.) and criminal offences (withholding of

57. See Kempadoo, Kamala. “The Modern-Day White (Wo)Man’s Burden: Trends in Anti-Trafficking and Anti-Slavery Campaigns.” *Journal of Human Trafficking*. 1:8–20, 2015.

URL: <https://doi.org/10.1080/23322705.2015.1006120>

58. Committee on the Elimination of Discrimination against Women (CEDAW). “General recommendation on women’s access to justice (Advance unedited version).” 23 July 2015. URL: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf

59. Ibid. Para 51 (l).

passports or other official documents, rape, violence, robbery, etc.), or in extreme cases forced labour and human trafficking. In countries where sex work is not recognised as a legitimate form of labour, or where it is restricted to EU citizens only, undocumented or irregularly working migrant sex workers are prevented from contacting authorities and seeking justice unless they fall victim of the worst forms of exploitation or trafficking. According to some sex workers in Norway, the only instance where they would be willing to engage with the police would be extreme circumstances where there was an immediate threat to their life.⁶⁰ The collateral damage of the inaccessibility of the criminal justice system for sex workers is significant:

- It reinforces the vulnerabilities of migrant sex workers and prevents them from turning to the police in the event of crime.
- As there is no firewall that would protect migrant sex workers filing police reports from being penalised for their engagement in sex work or for their undocumented status perpetrators are assured of their impunity.
- Trafficking in human beings is a complex phenomenon and often seen as a continuum that may start with subtle exploitation. Such exploitations would not lead to severe forms of exploitation, forced labour or trafficking if there were possibilities to seek help early on, without fear of being deported.
- Increased policing, profiling of migrant sex workers, surveillance and document checks undermine the relationship between sex workers and police. Instead, sex workers tend to hide from police and avoid any contact with them.
- Such system also discourages possible victims to come forward and self-identify as victims of crime. As a consequence, it contributes to the fact that many crimes (including severe exploitation, forced labour and trafficking) remain under-reported and undetected, and most perpetrators never go to trial.
- This approach also ignores that sex workers, as insiders, are uniquely placed to provide intelligence that can lead to the accurate detection of cases of human trafficking.⁶¹

Although there are not only bad but also good examples of police officers acting on behalf of sex workers in Europe, situations often depend on individual officers' temperament and whether they are sex worker-friendly. Therefore, policies need to be put in place that prioritise sex workers' safety. Furthermore, it is necessary that firewalls between immigration enforcement and access to justice and services are put in place and that national policies are designed towards better relationships and understanding between sex workers and police. An improved relationship, where sex workers enjoy police protection, will also benefit police as it will help them, through mutual trust, to enforce the law, detect crime and identify victims of trafficking.

60. Amnesty International (AI). "The Human Cost of 'Crushing' the Market: Criminalization of Sex Work in Norway." 26 May 2016. URL: <https://www.amnesty.org/en/documents/eur36/4034/2016/en>

61. Stacey and Gerasimov (2018).

Conditionality of right of residency linked to cooperation with criminal proceedings

The EU Directive 2004/81/EU introduced a residence permit for victims of trafficking who are third-country nationals and cooperate with the authorities in criminal proceedings.⁶² The assumption is that providing protection and the highly valued right of residency will 'produce' more witnesses and lead to a better prosecution of traffickers.

The ability to stay in a country and receive assistance beyond the reflection period is linked not only to victims' willingness to cooperate with authorities, but also to the usefulness of the information they share. Furthermore, the outcome of whether the victim will be granted a residence permit also depends on investigations and police capacities, especially where cross-border investigations are concerned.⁶³ Access to this highly desirable form of protection, a residence permit, is thus unequally distributed and depends on victims' roles in and value to criminal proceedings, not their individual needs.⁶⁴ Such system particularly disadvantages victims who were particularly isolated, had little to no control over their situation, or very limited access to information about their traffickers. It also disadvantages victims that have ample reasons not to report their traffickers and not to cooperate with authorities. Trafficking networks may threaten to harm their children, other family members, or suspected informants themselves, or victims may face retaliation in their home countries, from traffickers, for cooperating with the authorities, or be trafficked again.

There is significant criticism of criminal justice systems that exploit trafficking victims as witnesses in criminal proceedings, before eventually deporting them.⁶⁵ It has also been pointed out that "offering residency conditioned upon testifying can backfire in court and provide an opportunity for the defence to draw into doubt the veracity of the testimony, or indeed, even induce exaggeration of information in order to obtain a residence permit. ... Having something to gain from testifying easily weakens the credibility of the victim and threatens corresponding rights."⁶⁶

62. Council of Europe. "Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities." *Official Journal of the European Union*. 29 April 2004. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0081&from=EN>

63. Brunovskis, Anette and May-Len Skilbrei. "Two Birds with One Stone? Implications of conditional assistance in victim protection and prosecution of traffickers," *Anti-Trafficking Review*. issue 6. 2016. pp. 13–30. URL: <https://doi.org/10.14197/atr.20121662> [www.antitraffickingreview.org]

64. Ibid.

65. See, for instance: Segrave, Marie, Sharon Joy Pickering and Sanja Milivojevic. *Sex trafficking. International context and response*. Willan Publishing. 2009.; Segrave, Marie, Sharon Joy Pickering and Sanja Milivojevic. *Sex trafficking and modern slavery the absence of evidence*. Routledge. 2017.

66. Brunovskis and Skilbrei (2016).

It must be acknowledged that it is not in the interest of all victims to cooperate with the authorities and that such cooperation can have serious consequences for their safety and well-being.⁶⁷ A human rights-based approach should be the guiding principle for all anti-trafficking policies, not only in theory, but in practice. Such an approach would ensure that victims of trafficking are offered residence permits on the basis of their individual needs and risk assessments. The provision of residence permits must not be tied to victims' willingness to cooperate with investigations or the usefulness of the information they can provide.

67. Brunovskis, Anette. *Balancing protection and prosecution in anti-trafficking policies: A comparative analysis of reflection periods and related temporary residence permits for victims of trafficking in the Nordic Countries, Belgium and Italy*. Nordic Council of Ministers. 2012.
URL: <http://www.diva-portal.org/smash/get/diva2:701729/FULLTEXT01.pdf>

Partnership

***"If you speak out in favour of the decriminalisation of sex work as a member of the UK anti-trafficking sector, you risk losing partnerships, allies and funding."*⁶⁸**

Partnership is the fourth principle of anti-trafficking work; it recognizes the need for multi-stakeholder cooperative approaches in addressing trafficking in human beings. As early as in 2004, the first National Referral Mechanism (NRM) handbook, published by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), urged governments to include civil society organizations in national coordination mechanisms.⁶⁹ Subsequently, this approach was included in the evaluation criteria of both GRETA and the US TIP report. However, few sex worker organisations are invited to join anti-trafficking structures for political or ideological reasons'.

Although the requirement is formally fulfilled and most countries have included civil society organizations into their national coordination mechanisms against trafficking, more often than not, official anti-trafficking documents contain little regarding key communities' involvement. The ODIHR NRM handbook states: "To the extent possible, all actors and institutions with a potential influence on the future NRM structure should be studied. This should include both actors that are already having a positive impact and those expressing an initial reluctance or antagonism towards the future referral structure. At the assessment stage, the aim is to develop a comprehensive picture of existing structures and actors, their relationships with one another, their understanding of victim protection mechanisms, and their possible subsequent role in an NRM."⁷⁰

Whereas international anti-trafficking organisations rarely articulate the need of community measures that empower sex workers and support them to address structural and everyday constraints on their safety, access to services and measures to reduce their vulnerability to crimes, international health organisations are outspoken on that subject. According to the World Health Organisation (WHO), "[c]ommunity empowerment is a critical enabler for improving key populations' living conditions, developing strategies for health and rights interventions and redressing

68. Anonymous. "It's time for the anti-trafficking sector to step up for decriminalization of sex work." *Beyond Trafficking And Slavery*. Open Democracy. 24 June 2019. URL: <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/its-time-for-the-anti-trafficking-sector-to-stand-up-for-decriminalisation-of-sex-work>

69. ODIHR (2004).

70. Ibid.

violations of the human rights of people from key populations. Community empowerment can take many forms, such as meaningful participation of people from key populations in designing services, peer education, implementation of legal literacy and service programmes, and fostering key population-led groups and key population-led programmes and service delivery.”⁷¹ ⁷²

The Global Commission on HIV and the Law points to evidence that in places where sex workers’ communities are empowered, supported and consulted, they can be strong allies for anti-trafficking efforts, providing critical information about trafficked people.⁷³ For this to be effective, sex worker communities have to be engaged as formal partners with states’ anti-trafficking agencies, operatives and policymakers; in turn, harassment by law enforcement officers has to be ended and the criminalisation of sex work rescinded, in order to enable sex workers to operate freely without fear of arrest.⁷⁴

In its “Guidance note on HIV and sex work,” the Joint United Nations Programme on HIV/AIDS (UNAIDS) also noted that sex worker organisations are best positioned to refer women and children who are victims of trafficking to appropriate services when these organisations are recognized, included in policy development and take part in the national referral mechanism.⁷⁵

This has proven to work in the area of HIV/AIDS and other health issues. However, sex workers’ expertise and ideal position has not been used by actors in the anti-trafficking field due to the persistent conflation of human trafficking with sex work. Some of the most vocal early anti-trafficking activists (during the 1980s) were ‘radical feminists’ from the Global North who view all prostitution as a form of male violence against women, and consider trafficking the result of male demand for prostitution. Their main goal was, and still is, to abolish prostitution (as described above). This view is uncritically accepted by many stakeholders, including governments, and has become the dominant opinion, with dire consequences for sex workers and sex worker organisations.

So-called ‘End Demand’ groups and initiatives enjoy significant media and political attention and receive funding from national governments, EU programmes and private foundations. At the same time, sex workers are accused of colluding with

71. World Health Organization (WHO) “Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations. 2016 Update.” 2016. URL: <https://apps.who.int/iris/bitstream/handle/10665/246200/9789241511124-eng.pdf;jsessionid=988866A068BFA1AD08E73CC08E99D405?sequence=1>

72. “Key populations are defined groups who, due to specific higher-risk behaviours, are at increased risk of HIV irrespective of the epidemic type or local context. Also, they often have legal and social issues related to their behaviours that increase their vulnerability to HIV.” Ibid.

73. Levine, Judith. “Global Commission on HIV and the Law: Risks, Rights and Health.” *United Nations Development Programme*. 2012.

URL: <https://hivlawcommission.org/wp-content/uploads/2017/06/FinalReport-RisksRightsHealth-EN.pdf>

74. Secretariat to the Joint United Nations Programme on HIV/AIDS (UNAIDS Secretariat), United Nations Development Programme (UNDP), and United Nations Population Fund (UNFPA). “Joint submission to CEDAW on trafficking in women and girls in the context of global migration.” February 2019. URL: https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/CEDAW/GRTrafficking/UNAIDS_UNDP_UNFPA.docx&action=default&DefaultItemOpen=1

75. Joint United Nations Programme on HIV/AIDS (UNAIDS). “UNAIDS guidance note on HIV and sex work.” UNAIDS. 2012. URL: https://www.unaids.org/sites/default/files/sub_landing/files/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf

(or being) ‘pimps’ and traffickers, or pathologised as too victimised and mentally incompetent to make informed decisions about their own lives. As a result, the voices of sex workers and sex workers’ rights groups as well as their allies are frequently excluded from policy fora.⁷⁶ In such an environment, it is challenging for sex workers’ rights organisations to receive any public or private funding to better protect the rights of sex workers, to provide a variety of services for them, and, last but not least, to fight trafficking and exploitation in their communities.

In addition, there are many anti-trafficking stakeholders (including international and intergovernmental ones) and donors who prefer not to take a position on the issue of sex work, as it is seen as too controversial and polarising. However, the ‘prostitution-abolitionist thinking’ is often thinly-veiled in their communications and evident in their partnerships and priorities. The European Commission, for instance, has funded, and continues to fund, numerous projects to study the “demand for trafficking for sexual exploitation” or the gender dimensions of trafficking for sexual exploitation, which reinforce the abolitionist position. Similarly, ODIHR has organised or hosted events with openly abolitionist groups on ‘demand’ and ‘gender dimensions’, while the rights of sex workers continue to be a non-issue in the anti-trafficking discourse at the European level.

Some of the case studies of sex workers’ initiatives and their struggle with anti-trafficking policies and smart initiatives to help their peers are described in the 2018 study, “Sex Workers Organizing for Change: Self-representation, community mobilization, and working conditions”, by the Global Alliance Against Traffic in Women (GAATW).⁷⁷

To conclude with the collateral damages that are caused by the exclusion of sex workers from anti-trafficking policies, we could list all the above mentioned examples of collateral damages concerning the areas of prevention, protection and, prosecution.

The inclusion of a key population that is considered vulnerable to trafficking, namely sex workers, has so far not been considered as one of the strategies to help prevent trafficking and increase the identification of trafficked persons in Europe. The sex worker community could be one of the greatest allies in the fight against trafficking in persons, if partnerships engaging this community were developed and accepted.

76. This is evident, for instance, in the repeated exclusion of La Strada International (LSI) from the EU Civil Society Platform on Trafficking in Human Beings. It is also evident with regards to the available funding for sex workers’ rights organisations from private foundations. See: Mama Cash, Red Umbrella Fund, Open Society Foundations. “Funding for Sex Worker Rights: Opportunities for foundations to fund more and better.” 2015. URL: https://www.redumbrellafund.org/wp-content/uploads/2017/10/Report_funding-sex-worker-rights_FINAL_WEB.pdf

77. Stacey and Gerasimov (2018).

Conclusion

Sex workers are critical of the ways in which anti-trafficking policies are developed and implemented, and have denounced the negative effects of these policies on their lives, safety, and access to justice, as well as the resulting increased stigmatisation and discrimination. At the same time, sex workers stand in firm opposition to trafficking in human beings and exploitation in the sex industry. With no or very limited funding, sex workers frequently develop smart strategies to safeguard themselves and their peers against exploitation and violence. Despite the hostile prostitution policy ecosystem that surrounds them, sex workers throughout Europe are becoming increasingly vocal, organised and visible. Sex workers call for their rights to self-determination, non-discrimination, safety, access to justice and family life, as well as the right to be heard,⁷⁸ all of which are compromised due to harmful prostitution and anti-trafficking policies.

Sex workers' critique of prostitution laws and anti-trafficking measures has led to some positive results. Three major anti-trafficking networks have expressed their support for the sex workers' rights movement and the decriminalisation of sex work. Those are the Global Alliance Against Traffic in Women (GAATW), a network of over 80 NGOs from Africa, Asia, Europe, Latin America and the Caribbean and North America; La Strada International- NGO platform against trafficking in human beings with 22 members across Europe and Freedom Network USA, a national anti-trafficking alliance with 32 member organizations and six individual experts across the United States. Similarly, in 2019, the major migrants' rights network, Platform for International Cooperation on Undocumented Migrants (PICUM), added its voice to the call for the removal of all criminal and administrative prohibitions and penalties on sex work and against sex workers, their clients and non-exploitative third parties, in order to protect and empower undocumented sex workers.⁷⁹ A growing number of anti-trafficking groups, academics, health and human rights organisations and trade unions, including several UN agencies such as the World Health Organisation, UNAIDS and UNDP, Médecins du monde (Doctors of the World), Amnesty International, Human Rights Watch, Transgender

78. International Committee on the Rights of Sex Workers in Europe (ICRSE). "Sex Workers in Europe Manifesto." 17 October 2005.

URL: <https://www.sexworkereurope.org/sites/default/files/userfiles/files/join/manbrussels2005.pdf>

79. PICUM. "Safeguarding the human rights and dignity of undocumented migrant sex workers." September 2019. URL: <https://picum.org/wp-content/uploads/2019/09/Safeguarding-the-human-rights-and-dignity-of-undocumented-migrant-sex-workers.pdf>

Europe (TGEU), ILGA Europe and ILGA World, and the European AIDS Treatment Group, to name but a few, stand side by side with sex workers and sex workers' rights groups.⁸⁰

Sex workers in Europe have to actively participate in anti-trafficking discourses and mobilize both their own resources and their allies in order to mitigate the harmful effects that anti-trafficking policies, measures and intervention can have on their lives. It is time to take anti-trafficking policies into a new direction and promote sex worker-inclusive approaches within the anti-trafficking framework. The rallying cry of the global sex workers' movement applies, too, in the anti-trafficking arena:

**Nothing about
us without us!**

**Only Rights can Stop
the Wrongs!**

80. For more information, see for instance: NSWP "Rights-Affirming International Policies Relating to Sex Work." 2018.

URL: https://www.nswp.org/sites/nswp.org/files/sg_to_international_policies_nswp_-_2018.pdf



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